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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,583	01/14/2002	Atef Boulos	BP-8935B CIP	7434
23914	7590	12/01/2004	EXAMINER	
STEPHEN B. DAVIS BRISTOL-MYERS SQUIBB COMPANY PATENT DEPARTMENT P O BOX 4000 PRINCETON, NJ 08543-4000			CHOI, FRANK I	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/047,583

Applicant(s)

BOULOS ET AL.

Examiner

Frank I Choi

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 14 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.


Claim(s) objected to: _____.

Claim(s) rejected: 1-10, 14 and 15 under 112, 2nd paragraph.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____




BIHA QAZI, PH.D.
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicant indicates that the claims have not been amended to indicate what is intended by the term "stable" because one of ordinary skill in the art would know what is intended based on the disclosure in the specification as originally filed. However, limitations from the specification are not read into the claims. The Specification also discloses that "the present invention is also directed to a process for preparing a tablet or caplet having at least 100 IU Vitamin E, and other vitamins and minerals, comprising contacting Vitamin E in encapsulated form, preferably beadlets or spray dried, most preferably as beadlets, and other vitamins and minerals with silica and silicate, in amounts and under conditions effective to form a tablet or caplet, wherein the tablet or caplet formed does not visibly leach out Vitamin E oil from the encapsulated Vitamin E during compression or when stored at about room temperature for 12-24 months" (Specification, pg. 13, lines 26-33). Applicant, however, cites to a different definition on page 15, lines 14-18. As such, it is unclear whether Applicant intends that the definition set forth on page 15, lines 14-18 to limit the claim limitation "stable" or that the definition could be arrived at based on reading the entire specification. If the former there is no reason why the claim cannot contain said claim limitation. If the latter, the record needs to be clarified as to what applicant means by "stable"..